

ZONING BOARD OF REVIEW

Sitting as the

ZONING BOARD OF APPEALS

Barrington, Rhode Island

May 17, 2012

MINUTES OF THE MEETING:

At the call of the Chairman, Thomas Kraig, the Board met with Paul Blasbalg, Peter Dennehy, Ian Ridlon, Dave Rizzolo and Stephen Venuti.

Also present was Mark Hadden, specially retained as counsel for the Board.

At 7:12 P.M, Mr. Kraig opened the hearing and the Board proceeded to hear the following matter. At 10:15 P.M. the public participation portion of the meeting was closed and the Board deliberated on the matter.

Appeal of 251 Rumstick Road, LLC, 251 Rumstick Road, Barrington, RI 02806, from a Decision of the Building Official, Assessor's Plat 10, Lots 76 and 118, 247 Rumstick Road and 35 Fessenden Road, Barrington, RI 02806, holding that the two lots have not been merged.

Present: Martin P. Slepchow attorney for Mr. & Mrs. Domingues, Slepchow, Slepchow &

Associates, Inc., 1481 Wampanoag Trail, East Providence, RI
Edward Pimentel, AICP
Jeffery Gladstone, attorney for Mr. David Smith, abutter, 180 South
Main Street,
Providence, RI
Robert Speaker, Building Official, Town of Barrington
Andrew Teitz, counsel for Mr. Speaker, Ursillo, Teitz, & Ritch,
2 Williams Street, Providence, RI
Anthony DeSisto, attorney for the owners of the subject property, 450
Veterans Memorial Parkway, Suite 103, East Providence, RI

Mr. Sleprow submitted the following items as exhibits:

„« CV for Edward Pimentel

„« March 5, 2012 Analysis by Edward Pimentel

Before testimony began, the Board asked Mr. Hadden what the standards for their consideration would be for this matter. Mr. Hadden explained that they would be reviewing de novo, as if it were being presented to the Board as a new application.

As the presentation began, Mr. DeSisto wanted it re-noted that he objects to the appeal, as the appellant is appealing the opinion of the Building Official. In his opinion, the appellants should have filed for an appeal of the decision of the Planning Board when the administrative subdivision was filed. The time to appeal that decision has expired.

Mr. Teitz disagreed with Mr. DeSisto, noting that the administrative subdivision was a moot point in reference to this matter. Mr. Gladstone and Mr. Sleprow added that in the case of an administrative subdivision there was no notice requirement, and their clients were unaware of the application or the decision; accordingly, there had been no opportunity to appeal.

Mr. DeSisto objected to Mr. Gladstone appearing before and presenting to the Board, as he did not file his brief within the time frame set forth at the March 15, 2012 meeting. The Board discussed the issue and allowed Mr. Gladstone to continue, noting that Mr. Gladstone's client was not a party to the appeal, allowing for Mr. DeSisto to respond as needed.

Mr. Sleprow began his presentation by stating that lots 76 and 118 are substandard lots of record, with common ownership and a common boundary; therefore they should have been merged and only the Zoning Board of Review can provide relief from that merger provision.

Mr. Sleprow introduced Edward Pimentel and submitted his CV and Analysis as exhibits 1 and 2. Mr. Pimentel asserted that lots 76 and 118 were substandard lots of record; therefore, there were merged in accordance with the Barrington Zoning Ordinance. As such, lots 76 and 118 cannot be treated independently and can only be unmerged

by the Zoning Board of Review. As that did not happen, the subdivision could not be valid.

Mr. Venuti noted that the ordinance reads, "shall be merged", not "are merged" and asked if there was any evidence that the lots were ever actually merged. Mr. Gladstone said that "shall" indicates that the merger is mandatory. The Board inquired if the lots were taxed separately, which they are. They then asked if the lots appear as two separated lots on the Assessor's Map, and they do appear as two lots on the map.

Mr. Teitz questioned Mr. Pimentel, asking him if he knew if lots 76 and 118 showed as one lot, if the lots were taxed as one lot and if the owners were notified when the lots were merged. Mr. Pimentel responded that he did not know.

Mr. Gladstone questioned Mr. Speaker regarding how he made his determination. Mr. Speaker explained that when he was asked by Mr. Sleprow to make this determination, he consulted with Mr. Teitz and it was Mr. Teitz's opinion that these were two separate lots.

Closing arguments began with Mr. Sleprow. He asserted that the lots 76 and 118 were merged by operation of law, the standards for unmerger were not followed, and Mr. Teitz disregarded these standards by determining these to be two separate lots.

Mr. Gladstone stated that the rights and duties given to the Zoning Board are granted by ordinance. Only the Zoning Board can unmerge lots.

Mr. Teitz noted that there is discretion involved in the merger of lots; it is not a black and white issue. Each situation needs to be looked at independently and these lots had not been merged.

Mr. DeSisto said that his client had applied for and been granted an administrative subdivision, furthering his assertion that the lots had not been merged by ordinance. He noted that in other cases when he has applied to Zoning to unmerge lots, he had to provide prove that the lots had in fact been merged. There was no evidence that these lots had been merged.

As the Board's deliberation began, it was noted that there were three issues to consider:

„« Can the administrative subdivision be appealed?

„« Does the applicant have a right to appeal Mr. Speaker's determination?

„« Was Mr. Speaker's determination correct?

The Board discussed the use of „shall be merged” rather than „are merged” in the merger ordinance, finding that it means there are steps to be followed in merging substandard lots of record; there is not an automatic guarantee that the lots will be merged. In fact, there

is not proof that the lots were merged, supporting Mr. Speaker's decision.

MOTION: Mr. Venuti moved to continue the matter to the June 21, 2012 meeting, directing Mr. Hadden to draft a decision upholding the determination of the Building Official. Mr. Ridlon seconded the motion and it carried unanimously (5-0).

ADJOURN:

At 10:35 P.M. Mr. Venuti moved to adjourn the meeting, to be continued anew to the above date. Mr. Ridlon seconded the motion and the meeting was unanimously (5-0) adjourned.

Respectfully submitted,

Valerie Carroll, Secretary

Thomas Kraig, Chairman

cc: Mark Hadden

ZONING BOARD OF REVIEW

Barrington, Rhode Island

May 17, 2012

APPLICATIONS: #3658, 3665, 3668, 3669, 3670, 3671 & 3672

MINUTES OF THE MEETING:

**At the call of the Chairman, Thomas Kraig, the Board met with Paul Blasbalg, Peter Dennehy,
Ian Ridlon, Dave Rizzolo and Stephen Venuti.**

Also present was solicitors Andrew Teitz and Mark Hadden as well as Building Official Robert Speaker.

At 7:05 P.M. Mr. Kraig opened the meeting. At 7:12 the Board of Review temporarily adjourned in order to meet as the Zoning Board of Appeals. At 10:48 the Board of Review meeting was reopened and the Board proceeded to hear the following matters; at that time the Chair advised the applicants that due to the hour, only the first two applications could be heard that evening, and the remainder would be continued to a special meeting on May 31. At 11:40 P.M. the public participation portion of the meeting was closed and the Board proceeded to deliberate and vote on applications it had heard.

Continuation of application #3658, Timothy and Jill Lukens, 291 Narragansett Avenue, Barrington, RI 02806, applicants and owners, for permission to construct an 8' x 8' shed and a 6' x 4'7" shed; Assessor's Plat 1, Lot 289, R-10 District, 291 Narragansett Avenue, Barrington, RI 02806, requiring a dimensional variance for a sheds

within 5' of the primary structure, sheds within the side yard setback, as well as for exceeding lot coverage.

Present: Timothy Lukens, 291 Narragansett Avenue, Barrington, RI

In the audience:

Irene Urban, 289 Narragansett Avenue, Barrington, RI

Mr. Lukens explained that since his original presentation he has decided to relocate one of his sheds. He is proposing to place the 8' x 8' shed in the rear corner of his yard, nearest Ms. Urban's property, approximately 2 feet from the property line. He would like to leave the smaller, Rubbermaid shed in its existing location, 17' from the property line along the side of the house. Mr. Lukens is proposing these locations in order to preserve open space in the yard to allow his children room to play and to provide the ability to close off the smaller shed to prevent the children from accessing it.

Ms. Urban spoke in opposition to the proposal, noting concerns with the locations of the lot-line, which is in dispute, the impact of the sheds on her property, as well as the overall effect upon the character of the neighborhood. She felt the sheds could be located elsewhere and lessen the impact upon her property. The Board explained that the lot-line issue was one outside of its purview.

The Board expressed concern with the safety of the location of the

Rubbermaid shed, noting that it can be a fire hazard, both to the surrounding property as well as preventing rescuer's access.

The Board decided to split the decision into two parts.

MOTION #1: Mr. Venuti moved to approve the 8' x 8' shed as located on the revised plan dated February 28, 2012. Mr. Rizzolo seconded the motion and it carried unanimously (5-0).

DISCUSSION:

The Board members stated they were in favor of approving the application for the following reasons:

„« The lot is very small, creating a need to maximize the available space

„« There is limited storage in the home, creating a need for additional storage

„« There is a precedent in the neighborhood w many small lots with sheds located very close to the lot lines.

REASON FOR DECISION:

It was the judgment of the Board that the standards in Section 185-69 have been met: A) that the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area, and is not due to an economic disability of the applicant; B) that the hardship is not the result of any prior action of

the applicant and does not result primarily from the desire of the applicant to realize greater financial gain; C) that the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the comprehensive Plan; D) that the relief to be granted is the least relief necessary. Additionally, the standards for a dimensional variance set forth in Section 185-71 have been met because the applicant has proved that the hardship to be suffered by the owner, absent granting the relief, would amount to more than a mere inconvenience.

MOTION #2: Mr. Rizzolo moved to deny relief for the Rubbermaid shed located on the side of the home. Mr. Dennehy seconded the motion and it carried unanimously (5-0).

DISCUSSION:

The Board members stated they were denying the application for the following reasons:

„« The location presents safety issues

„« The shed can be located elsewhere on the lot

„« Denying the proposal would not create more than a mere inconvenience

REASON FOR DECISION:

It was the judgment of the Board that certain of the standards in Section 185-69 have NOT been met: C) that the granting of the requested variance will alter the general character of the surrounding

area or impair the intent or purpose of this chapter or the comprehensive Plan; D) that the relief to be granted is not the least relief necessary. Additionally, the standards for a dimensional variance set forth in Section §185-71 have not been met because the applicant has not proved that the hardship to be suffered by the owner, absent granting the relief, would amount to more than a mere inconvenience.

Application #3665, Jetty Charian, 4 Houghton Street, Barrington, RI 02806, applicant and lessee, James Tavares, 49 Bradford Street, Bristol, RI 02809, owner, for permission to open a convenience store; Assessor's Plat 2, Lot 16, Neighborhood Business District, 195 Washington Road, Barrington, RI 02806, require a Special Use Permit for parking within the front yard setback.

Before this matter began, Mr. Teitz excused himself and Mr. Hadden sat to advise the Board.

Present: Jetty Charian, 4 Houghton Street, Barrington, RI
Nabil Rashid, engineer, NRC Associates, East Providence, RI

In the audience:

S. Paul Ryan, attorney, Riverside, RI

Michael J. Razzzy Dellefratte, 93 Spring Avenue, Barrington, RI

Scott Baer, attorney, East Providence, RI

The following were submitted as exhibits:

„« Photographs of existing conditions

„« Site plan of area

„« 8/27/97 issue of The Barrington Times

The applicants opened by explaining that they are seeking to open a convenience store at 195 Washington Road, a space previously occupied by a catering business. Under the new Zoning regulations, 1 space is required for every 350 square feet of space; therefore, this use would require five parking spaces. Spots one through four would be on the west side of the building, perpendicular to Bay Spring Avenue, with two spaces entered directly from Bay Spring and the other, rear-most spaces entered via the driveway on the south side of the building off Washington Road. Space five would be located on the east side of the building parallel to Washington Road. The applicant is anticipating a lot of foot traffic and will also be providing a bike rack. Deliveries would most likely occur on a daily basis, with the process taking approximately 10-15 minutes for each shipment. The plan would be for deliveries to be made by parking in the drive to the south of the building ;V the Board noted that during these deliveries, any cars parked in spaces 3 and 4 would be blocked in.

Those who spoke in opposition to the application noted that traffic has long been of great concern in the area, and has increased in recent years with further development down Bay Spring. The Bay

Spring/Washington Road intersection is very busy and cars parked on the site would have difficulty backing onto those roads. Additionally, the south side does not have adequate space for both a delivery truck in addition to the parking; therefore, there is a high probability that the trucks will park on the street creating an even greater hazard on the roadways.

MOTION: Upon a motion by Mr. Ridlon, with a second by Mr. Rizzolo, the Board voted unanimously (5-0) to deny this application.

DISCUSSION:

The Board members stated they were denying the application for the following reasons:

- „« The proposed parking is inappropriate and dangerous**
- „« Daily deliveries will compound the traffic hazard issues in the area**
- „« Change in use from the former catering business to the proposed convenience store would create too high-intensity a use for this property in view of the parking / street access issues**

REASON FOR DECISION:

It was the judgment of the Board that the standards in Section §185-73 have NOT been met: That A). The public convenience and welfare will not be substantially served, B). It will not be in harmony with the general purpose of this chapter, and with the Comprehensive Community Plan, C). It will result in or create conditions that will be inimical to the public health, safety, morals and general welfare of the

community and D). It will substantially or permanently injure the appropriate use of the property in the surrounding area or district.

Application #3668, Kevin Sawyer, 117 Windward Lane, Bristol, RI 02809, applicant, Albertina Silva and Lisa Ottone, 3 Cherry Lane, Barrington, RI 02806, owners, for permission to create a garage addition; Assessor's Plat 21, Lot 74, R-25 District, 3 Cherry Lane, Barrington, RI 02806, requiring dimensional relief for side yard setback.

Due to the extensive length of the prior matters, this application could not be heard.

MOTION: Mr. Rizzolo moved to continue this matter to the May 31, 2012 special meeting. Mr. Dennehy seconded the motion and it carries unanimously (5-0).

Application #3669, Lawrence Ashley, 114 Rumstick Road, Barrington, RI 02806, applicant and owner, for permission to construct front and rear dormers; Assessor's Plat 26, Lot 54, R-25 District, 114 Rumstick Road, Barrington, RI 02806, requiring dimensional relief for side yard setback.

Due to the extensive length of the prior matters, this application could not be heard.

MOTION: Mr. Rizzolo moved to continue this matter to the May 31, 2012 special meeting. Mr. Dennehy seconded the motion and it carries unanimously (5-0).

Application #3670, Raymond Bullock Jr., 74 Massasoit Avenue, Barrington, RI 02806, applicant and owner, for permission to create a family room addition, add a rear porch, replace rear deck and erect a six-foot fence; Assessor's Plat 32, Lot 242, R-10 District, 74 Massasoit Avenue, Barrington, RI 02806, requiring dimensional relief for rear yard setback.

Due to the extensive length of the prior matters, this application could not be heard.

MOTION: Mr. Rizzolo moved to continue this matter to the May 31, 2012 special meeting. Mr. Dennehy seconded the motion and it carries unanimously (5-0).

Application #3671, Carol Bell, 39 Shore Drive, Barrington, RI 02806, applicant and owner, for permission to raise garage roof and add a small connection between current residence and proposed modification; Assessor's Plat 1, Lot 281, 296 Narragansett Avenue, Barrington, RI 02806, requiring dimensional relief for side yard setback, rear yard setback, exceeding lot coverage as well as for being within 100' of a wetlands/waterbody.

Mr. Kraig read into the record a request from the applicant to continue this application to the June meeting.

MOTION: Mr. Rizzolo moved to continue the application to the June 21, 2011 meeting. Upon a second from Mr. Ridlon, the Board unanimously voted (5-0) to continue this application.

Application #3672, Tiffany Thielman and Sergio Sousa, 18 Charles Street, Barrington, RI 02806, applicants and owners, for permission to construct an 8' x 7' addition as well as a 6' x 28' porch; Assessor's Plat 30, Lot 82, R-10 District, 18 Charles Street, Barrington, RI 02806, requiring dimensional relief for front yard setback.

Due to the extensive length of the prior matters, this application could not be heard.

MOTION: Mr. Rizzolo moved to continue this matter to the May 31, 2012 special meeting. Mr. Dennehy seconded the motion and it carries unanimously (5-0).

MINUTES OF THE PREVIOUS MEETING:

A motion was made by Mr. Ridlon and seconded by Mr. Rizzolo to accept the April 26, 2012 Zoning Board of Review minutes as written. The motion carried unanimously (5-0).

ADJOURN:

There being no other business, Mr. Rizzolo moved to adjourn at 11:50 P.M. Mr. Venuti seconded the motion and the meeting was adjourned.

Respectfully submitted,

Valerie Carroll, Secretary

Thomas Kraig, Chairman

cc: Andrew Teitz, solicitor

Mark Hadden, solicitor